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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Gregory Stamper,

10 Plaintiff,

11 v.

12 Freebird Logistics Incorporated, et al.,

13 Defendants.  
14

No. CV-22-00155-PHX-MTL

**ORDER**

15 Plaintiff Gregory Stamper filed a Motion for Award of Attorneys' Fees pursuant to  
16 LRCiv 54.2(b)(2) and 29 U.S.C. § 216(b). (Doc. 15 at 1.) For the following reasoning, the  
17 Court grants the motion.<sup>1</sup>

18 **I. BACKGROUND**

19 The Court previously set forth the factual background of this case. (*See* Doc. 13.)  
20 From approximately September 20, 2021 to September 28, 2021, Stamper worked as a  
21 driver and driver's helper for Freebird Logistics Inc. ("Freebird") and Jeffrey Larson, Jane  
22 Doe Larson, Kurt Larson, and Jane Doe Larsen II, the owners of Freebird (collectively, the  
23 "Defendants"). (Doc. 1 at 3-7.) In January 2022, Stamper filed his complaint seeking relief  
24 for unpaid wages, overtime wages and minimum wages. (Doc. 1 at 1.) He alleged that  
25 Defendants failed to pay him any wages for the time spent working at Freebird. (*Id.* at 7.)  
26 Plaintiff served Freebird and Jeffrey Larson on February 9, 2022. (Docs. 6, 7.) Larsen and  
27 Freebird failed to respond. Upon Stamper's application (Doc. 9), the Clerk of the Court

28 <sup>1</sup> Dallis Meiering, a third-year law student at the Sandra Day O'Connor College of Law at Arizona State University, assisted in drafting this Order.

1 entered default against Larsen and Freebird. (Doc. 10.) Plaintiff subsequently moved for  
 2 default judgment. (Doc. 11.) Once again, Defendants did not respond. Accordingly, the  
 3 Court granted Plaintiff's Motion for Default Judgment (Doc. 13) and entered judgment in  
 4 favor of the Plaintiff. (*Id.* at 4-10). Subsequently, Plaintiff filed this Motion for Award of  
 5 Attorneys' Fees totaling \$7,355.75. This request includes \$4,620.00 for Plaintiff's attorney  
 6 Christopher Bendau's ("Counsel") billed hours, \$735.75 for filing fees and service costs,  
 7 and \$2,000.00 for anticipated costs incurred in collecting on the judgment. (Doc. 15 at 5,  
 8 6; Doc. 15-5 at 2-8.)

## 9 **II. LEGAL STANDARD**

10 The Fair Labor Standards Act ("FLSA") requires that, upon application, the Court  
 11 award the prevailing party reasonable attorneys' fees.<sup>2</sup> 29 U.S.C. § 216(b). Before the  
 12 Court awards attorneys' fees, it must determine the prevailing party and if the fees are  
 13 reasonable. LRCiv 54.2(c); *see, e.g., McGlothlin v. ASI Capital Ventures LLC*, No. CV-  
 14 19-04895-PHX-DJH, 2021 WL 857367, at \*1 (D. Ariz. Mar. 8, 2021) ("A party seeking  
 15 an award of attorney's fees must show it is eligible and entitled to an award, and that the  
 16 amount sought is reasonable. . . . To be entitled to an award, Plaintiff must have prevailed  
 17 in this matter.").

18 To determine the reasonableness of a requested award of attorneys' fees, the Court  
 19 uses the "loadstar" approach. *Coe v. Hirsch*, No. CV-21-00478-PHX-SMM (MTM), 2022  
 20 WL 5008841, at \*1 (D. Ariz. Jan. 21, 2022); *see also Pelayo v. Platinum Limousine Servs.,*  
 21 *Inc.*, 804 Fed. Appx. 522, 524 (9th Cir. 2020). "Under this approach, a 'presumptively  
 22 reasonable' fee award 'is the number of hours reasonably expended on the litigation  
 23 multiplied by a reasonable hourly rate.'" *Coe*, 2022 WL 508841, at \*1 (quoting *Camacho*  
 24 *v. Bridgeport Fin., Inc.*, 523 F.3d 973, 982 (9th Cir. 2008)). The Court may adjust the  
 25 lodestar amount to account for the *Kerr* factors. *Gary v. Carbon Cycle Ariz. LLC*, 398 F.  
 26 Supp. 3d 468, 485 (D. Ariz. 2019). Those factors include:

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27  
 28 <sup>2</sup> The Court notes that Plaintiffs also asserted that they are owed reasonable attorneys' fees  
 under Arizona law. The Court finds the FLSA provides a sufficient basis to award  
 attorneys' fees.

(1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the “undesirability” of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases.

*Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975); *see also* LRCiv. 54.2(c)(3).

### III. DISCUSSION

#### A. Eligibility for and Entitlement to Attorneys’ Fees

For FLSA purposes, the prevailing party is the one that “succeed[ed] on any significant issue in litigation which achieves some of the benefit the part[y] sought in bringing suit.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (quoting *Nadeau v. Helgemoe*, 581 F.2d 275, 278–79 (1st Cir. 1978)); *see also* *Haworth v. State of Nev.*, 56 F.3d 1048, 1052 (9th Cir. 1995) (applying the *Hensley* standard to an analysis of whether the plaintiff is the prevailing party in an FLSA case). Even where the mere filing of an action brings about the payment of unpaid wages, a plaintiff becomes the prevailing party for purposes of attorneys’ fees award. *Orozco v. Borenstein*, 2013 WL 4543836, at \*2 (D. Ariz. Aug. 18, 2013). Here, the Court granted the default judgment against Defendants for the wages sought. Thus, Plaintiff is eligible and entitled to receive reasonable attorneys’ fees. *See* 29 U.S.C. § 216(b).

#### B. Reasonableness of Requested Attorneys’ Fees

##### 1. Time and Labor Required

Plaintiff requests an award of \$7355.75. This request includes \$4,620.00 for Counsel’s billed hours, \$735.75 for filing fees and service costs, and \$2000.00 for anticipated costs to be incurred in collecting on the judgment. (Doc. 15 at 5, 6.) The Court must apply the loadstar approach to determine whether this request is reasonable. *Coe*, 2022 WL 508841, at \*1. To calculate the loadstar amount, the Court considers whether the

1 requesting party expended a reasonable number of hours and if the requesting party billed  
 2 those hours at a reasonable rate. *Id.* “The party seeking an award of attorneys’ fees bears  
 3 the burden of demonstrating that the rates requested are ‘in line with the prevailing market  
 4 rate of the relevant community.’” *Gary*, 398 F. Supp. 3d at 485 (quoting *Carson v. Billings*  
 5 *Police Dept.*, 470 F.3d 889, at 891 (9th Cir. 2006)). “[T]he relevant community is the forum  
 6 in which the district court sits.” *Camacho*, 523 F.3d at 979.

7 Counsel charged \$350.00 an hour. (Doc. 15 at 7.) The Court finds that this hourly  
 8 fee is reasonable in the Phoenix legal market. *See e.g., Coe*, 2022 WL 508841, at \*1  
 9 (awarding attorneys’ fees at a rate of \$378.75 per hour); *Mayweathers v. Iconic Results*  
 10 *LLC*, No. CV-20-01216-PHX-DJH, 2020 WL 8181700, at \*3 (D. Ariz. Nov. 10, 2020)  
 11 (awarding attorneys’ fees at a rate of \$378.75 per hour, even though the case was “easy”);  
 12 *Gualotuna v. Estrella Gymnastics LLC*, No. CV-16-00597-PHX-DLR, 2016 WL 8669298,  
 13 at \*2 (D. Ariz. Oct. 28, 2016) (awarding attorneys’ fees for a twenty-year attorney and a  
 14 three-year attorney at rates of \$475 and \$375 per hour respectively). The Court finds that  
 15 Plaintiff has met his initial burden of demonstrating the reasonableness of Counsel’s hourly  
 16 rates.

17 Next, the Court must consider whether Counsel expended a reasonable number of  
 18 hours. *Coe*, 2022 WL 508841, at \*1. The Court excludes attorneys’ fees for clerical and  
 19 administrative tasks. *See Gary*, 398 F. Supp. 3d at 487. Counsel asserts this case required  
 20 13.2 hours of his time. (Doc. 15 at 7.) Upon review of Counsel’s time sheet, the Court finds  
 21 Counsel billed for clerical and administrative tasks. The Court therefore deducts the  
 22 following hours:

23  
 24 0.1 hours on November 23, 2021 for “[s]end representation agreement.”

25 0.2 hours on November 23, 2021 for “[r]eceive representation agreement, set up  
 file.”

26 0.1 hours on January 27, 2022 for “[f]ile case.”

27 0.2 hours on January 28, 2022 for “[s]end documents to process server.”

28 0.1 hours on March 9, 2022 for “[f]ile proofs of service.”

0.1 hours on March 9, 2022 for “[f]ile application for entry of default.”

0.1 hours on March 19, 2022 for “[f]ile motion for default judgment.”

1           0.1 hours from the 1.0 time entry on July 27, 2022 for “[f]inalize, file motion for  
2           attorneys[’] fees and costs.”

3  
4           (Doc. 15-5 at 2.) Accordingly, the Court finds 12.2 hours reflects the reasonable amount of  
5           time spent on the matter. The revised total amount of Counsel’s fees is \$4,270.00  
6           (reflecting 12.2 hours billed at \$350.00 an hour).

## 7                           **2. Novelty and Difficulty**

8           The Court finds this case did not present any novel or difficult issues. *Verduzco v.*  
9           *Value Dental Centers Mesa W. AZ LLC*, No. CV-02380-PHX-DJH, 2022 WL 2718163, at  
10          \*2 (D. Ariz. July 12, 2022) (finding an Arizona minimum wage and overtime claim did not  
11          present any novel or difficult issues).

## 12                          **3. Requisite Skill**

13          The Court finds it takes a “moderate amount of skill to litigate FLSA cases.” *Id.*  
14          Counsel avers the legal issues raised by this FLSA action were “sophisticated and required  
15          extensive knowledge of the law,” but also admits that the action had a “straightforward  
16          nature.” (Doc. 15 at 7.) On balance, this constitutes a moderate amount of requisite skill.

## 17                          **4. Preclusion of Other Employment**

18          Counsel avers that he was not “significantly” precluded from other employment  
19          because of this representation. (*Id.* at 8.)

## 20                          **5. Customary Fee**

21          Counsel asserts that his hourly rate of \$350.00 is reasonable. (*See id.* at 6, 7.) The  
22          Court agrees. *Grabda v. Innovative Manufacturing Solutions, Inc.*, 2022 WL 6680378, at  
23          \*1 (D. Ariz. November 12, 2020) (determining that an hourly rate of \$325 was reasonable  
24          for Christopher J. Bendau). The Court also agrees with Counsel that the increase from  
25          \$325.00 to \$350.00 is reasonable.

## 26                          **6. Experience, Reputation and Ability of the Attorneys**

27          According to Counsel, his practice area remains exclusively within employment  
28          wage litigation, largely under the FLSA. (Doc. 15 at 10, 11.) He has practiced law since

2016 and litigated more than 150 employment suits. (*Id.*, Doc. 15-6 at 5.)

## **7. Fixed or Contingent Fee**

Counsel worked on a contingency basis, requiring forty percent of the total recovery. (Doc. 15 at 8, Doc. 15-1 at 3.)

## **8. Time Limitations**

Nothing indicates Plaintiff imposed time limitations on this matter. *See Pozez v. Ethanol Cap. Mgmt., LLC*, No. CV-07-00319-TUC-CKJ, 2013 WL 12095669, at \*4 (D. Ariz. July 15, 2013) (granting plaintiff's attorneys' fees even where there were no time limitations imposed).

## **9. Amount Involved and Results Obtained**

"Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee . . . ." *Hensley v. Eckerhart*, 461 U.S. 424, 435–36 (1983). Here, Plaintiff received \$5,333.44 accounting for all his estimated unpaid wages. (Doc. 14 at 1.) The Court therefore finds Plaintiff obtained excellent results.

## **10. The Case's Undesirability**

Counsel does not label this case as particularly undesirable, but notes the inherent risk involved with contingency fee cases. (Doc. 15 at 11.)

## **11. Nature and Length of Relationship with the Client**

Before the case at hand, Counsel has not represented Plaintiff. (*Id.* at 11.) This case has been present on the Court's docket since January 2022.

## **12. Hourly Fees Awarded in Similar Cases**

Plaintiff references a variety of cases for awards in actions of a similar nature. (*Id.* at 5, 11.); *see, e.g., Grabda*, 2022 WL 6680378, at \*1; *see also Gualotuna*, No. CV-16-00597-PHX-DLR, 2016 WL 8669298, at \*2 (awarding attorneys' fees for a twenty-year attorney and a three-year attorney at rates of \$475 and \$375 per hour respectively).

## **13. Other Matters**

Plaintiff requests \$2,000.00 for anticipated costs and fees for collection efforts. Plaintiff does not offer any specific facts to substantiate these costs and fees but asserts

1 they are reasonable. (Doc. 15 at 13 (noting “Plaintiff and [Counsel] will likely need to pay  
2 fees and additional costs in their collection effort”).) In doing so, Plaintiff cites  
3 distinguishable case law. *See Export Dev. Canada v. Patterson, Inc.*, 2008 WL 5205199,  
4 at \*1 (D. Or. Dec. 11, 2008). In *Patterson*, the court awarded \$2,000.00 for anticipated  
5 attorneys’ fees for collection efforts because the defendant failed to make payments  
6 according to a settlement agreement the parties entered into following litigation. *Id.*  
7 Additionally, the defendant in that case did not respond to the plaintiff’s subsequent  
8 complaint to enforce the settlement agreement. *Id.* Here, Plaintiff does not offer any  
9 evidence concerning the Defendant’s financial status or that the Defendant may resist  
10 payment. *See Farm Credit of Nw. Fla., ACA v. R & B Const. of S. Alabama, Inc.*, No. CIV  
11 08-0439-WS-C, 2009 WL 4456340, at \*5 n. 7 (S.D. Ala. Nov. 24, 2009) (noting a default  
12 judgment alone does not support finding a party may not respond to a judgment).

13 While Defendant has not responded to the present litigation, an award for collection  
14 efforts is too speculative. *See Akula v. Airbee Wireless, Inc.*, No. 1:08CV421(JCC), 2009  
15 WL 122795, at \*2 (E.D. Va. Jan. 14, 2009) (finding an award for anticipated attorneys’  
16 fees too speculative); *see also F.D.I.C. v. Thornton*, No. 3:12-CV-00218, 2014 WL  
17 4174037, at \*2-5 (M.D. Tenn. Aug. 20, 2014) (reasoning a plaintiff may be entitled to costs  
18 associated with anticipated collection efforts but denying the plaintiff’s request for costs  
19 and fees where it did not explain its anticipated collection efforts). Other than stating  
20 Plaintiff “will likely” have fees and costs associated with the collection efforts, Plaintiff  
21 did not explain any efforts he plans to take. Under these circumstances, the costs and fees  
22 for collection efforts are too speculative. Although the Court finds that the speculative  
23 collection costs are unreasonable, this Order does not preclude Plaintiff from seeking  
24 collection costs and, for that matter, future attorneys’ fees, should they be incurred.

25 On balance, the *Kerr* factors show that, subject to some deductions, Plaintiff’s  
26 request is reasonable. Thus, the Court awards Plaintiff attorneys’ fees of \$4,270.00 and  
27 \$737.75 in costs. The Court declines to award the request for \$2,000.00 for anticipated  
28 collection efforts. The Court has itemized its reductions to Plaintiff’s fee award in the



1 spreadsheets attached as Exhibit A to this Order. The Court awards Plaintiff a total sum of  
2 \$5,007.75.

3 **IV. CONCLUSION**

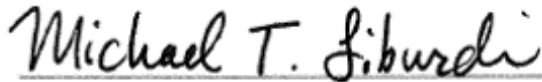
4 Accordingly,

5 **IT IS ORDERED** granting Plaintiffs' motion for attorneys' fees. (Doc. 15.)

6 **IT IS FURTHER ORDERED** that the Defendant shall pay \$5,007.75 in attorneys'  
7 fees within thirty (30) days from the date of this order.

8 **IT IS FURTHER ORDERED** that Plaintiffs shall file a notice of satisfaction  
9 within seven (7) days of receipt of the full amount of attorneys' fees as contemplated by  
10 this Order.

11 Dated this 23rd day of September, 2022.

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14 Michael T. Liburdi  
15 United States District Judge  
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## EXHIBIT A

DATE	ATTY	RATE	TIME	ACTIVITY	Amount	Court's Ruling	Modified Hours	Modified Amount
11/23/21	CJB	\$ 350	1.0	Initial consultation with client	\$ 350.00		1.0	\$ 350.00
11/23/21	CJB	\$ 350	0.1	Send representation agreement	\$ 35.00	Entry deducted. Clerical.	0.0	\$ 0.00
11/23/21	CJB	\$ 350	0.2	Receive representation agreement, set up file	\$ 70.00	Entry deducted. Clerical.	0.0	\$ 0.00
11/23/21	CJB	\$ 350	0.1	Communication w/ client re representation	\$ 35.00		0.1	\$ 35.00
11/23/21	CJB	\$ 350	0.5	Research entities and ownership	\$ 175.00		0.5	\$ 175.00
1/26/22	CJB	\$ 350	0.3	Discuss with CPB re: collective action or single Plaintiff	\$ 105.00		0.3	\$ 105.00
1/26/22	CJB	\$ 350	1.0	Begin drafting complaint	\$ 350.00		1.0	\$ 350.00
1/27/22	CJB	\$ 350	0.6	Communications with client via phone and text messag[es] re: facts and specific q's for complaint	\$ 210.00		0.6	\$ 210.00
1/27/22	CJB	\$ 350	0.6	Finalize complaint and supporting documents	\$ 210.00		0.6	\$ 210.00
1/27/22	CJB	\$ 350	0.1	File case	\$ 35.00	Entry deducted. Clerical.	0.0	\$ 0.00
1/27/22	CJB	\$ 350	0.1	Review case opening documents	\$ 35.00		0.1	\$ 35.00
1/28/22	CJB	\$ 350	0.2	Send documents to process server	\$ 70.00	Entry deducted. Clerical.	0.0	\$ 0.00
2/9/22	CJB	\$ 350	0.1	Email thread with process server re service complete	\$ 35.00		0.1	\$ 35.00
2/9/22	CJB	\$ 350	0.1	Texts with client re: service	\$ 35.00		0.1	\$ 35.00
2/28/22	CJB	\$ 350	0.2	Tests with client re: text from Defendant offering to settle with client directly	\$ 70.00		0.2	\$ 70.00
3/9/22	CJB	\$ 350	0.1	File proofs of service	\$ 35.00	Entry deducted. Clerical.	0.0	\$ 0.00
3/9/22	CJB	\$ 350	0.3	Draft application for entry of default	\$ 105.00		0.3	\$ 105.00
3/9/22	CJB	\$ 350	0.1	File application for entry of default	\$ 35.00	Entry deducted. Clerical.	0.0	\$ 0.00
3/10/22	CJB	\$ 350	0.1	Review entry of default	\$ 35.00		0.1	\$ 35.00
3/17/22	CJB	\$ 350	2.5	Draft motion for default judgment and supporting docs	\$ 875.00		2.5	\$ 875.00
3/18/22	CJB	\$ 350	0.1	Send and receive executed declaration from client	\$ 35.00		0.1	\$ 35.00
3/18/22	CJB	\$ 350	0.3	Finalize motion for default judgment and documents	\$ 105.00		0.3	\$ 105.00
3/18/22	CJB	\$ 350	0.1	File motion for default judgment	\$ 35.00	Entry deducted. Clerical.	0.0	\$ 0.00
5/13/22	CJB	\$ 350	0.1	Review order of dismissal re: Kurt Larsen and Jane Doe Larsen II	\$ 35.00		0.1	\$ 35.00
6/28/22	CJB	\$ 350	0.3	Review order granting motion for default judgment	\$ 105.00		0.3	\$ 105.00
6/28/22	CJB	\$ 350	0.1	Review and save Clerk's default judgment	\$ 35.00		0.1	\$ 35.00
7/18/22	CJB	\$ 350	1.6	Begin drafting motion for attorneys' fees and costs	\$ 560.00		1.6	\$ 560.00
7/21/22	CJB	\$ 350	1.2	continue drafting motion for attorneys' fees and costs	\$ 420.00		1.2	\$ 420.00
7/21/22	CJB	\$ 350	0.1	Text to client with status update	\$ 35.00		0.1	\$ 35.00
7/27/22	CJB	\$ 350	1.0	Finalize, file motion for attorneys fees and costs	\$ 350.00	Entry reduced by 0.1 reflecting other filing entries. Clerical.	0.9	\$ 315.00
TOTAL HRS			13.2	TOTAL FEES	\$ 4,620.00		12.2	\$4,270.00
							TOTAL REVISED FEES	\$4,270.00

DATE	COSTS	Amount	Court's Ruling		Modified Amount
1/14/2022	Service Costs	\$335.75			\$335.75
1/27/2022	Complaint filing fee	\$402.00			\$402.00
Future	Anticipated costs of collecting on anticipated judgment	\$2,000.00	Entry deducted. Cannot collect anticipated fees.		\$0.00
TOTAL COSTS		\$ 737.75			\$737.75
					TOTAL REVISED COSTS \$737.75

GRAND TOTAL \$5,007.75